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File No. O. Motor Spirit Tax/51

Legal Department.

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Subject:-

Opinions under the Bombay Sales of Motor Spirit Taxation Act, 1946.

P.S. (E)

File No. O. Motor ~~Spirit~~ Tax. /51

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C O N T E N T S.

Legal Department File No. O. Meter Spirit Tax/1951.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the Bombay Sales of Meter Spirit Taxation Act, 1946.	
1	688-Confl. 16-7-51	Sec. 3(3) Question whether when two retail traders failed to pay arrears of tax on the sale of meter spirit and when notices were issued to them to show cause why ~~this~~ their licences should not be cancelled for failure to keep accounts, pay taxes every month etc. and subsequently paid the taxes, action can be taken against them.	1-6
2	14195-Confl 6-9-51	Sec. 18(1) Question whether Collector's offer to compound the offence on the offender's agreeing to pay a sum of money equal to 1/4th of the amount of tax remaining in arrears or the Finance Deptt's suggestion to recover an amount equal to 1/2 th amount of the arrears of the tax be in conformity with sec. 18(1).	7-8

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The District Magistrate, Panch Mahals, reports that two retail traders authorised to sell meter spirit in Dehad failed to pay arrears of tax on the sale of meter spirit under section 3 of the Bombay Sales of Meter Spirit Taxation Act,1946 (Bom.VI of 1946) for periods extending to 27 months in one case and 18 months in another. The District Magistrate therefore issued notices to these traders under Condition 6 of the licences to show cause why their licences should not be cancelled for failure to keep accounts, submit reports and to pay the taxes every month as required by Condition No.5. The licensees subsequently paid the taxes. The question raised by the District Magistrate is whether action can be taken against them under sub-section (3) of section 3 of the Act. The District M Government Pleader, Panch Mahals, who was consultdd by the District Magistrate has expressed the opinion that in view of the failure of the licensing authority to serve a notice under sub-rule (1) of Rule 16 of the Bombay Sales of Meter Spirit Taxation Rules, 1948, on the licensees requiring them to pay the taxes within 15 days of the notice, no action can be taken under sub-section (3) of section 3. The Revenue Department however considers that action can be taken under section 18 of the Act by way of compesition. The R.L.A. is requested to advise.

2. Sub-rule (1) of rule 14 of the Bombay Sales of Meter Spirit Taxation Rules, 1948, requires traders to submit returns of all Meter Spirit sold or consumed by them. Sub-rule (2) requires them to furnish evidence of their having paid the amount of the tax mentioned in the returns into the Government Treasury etc. Sub-rule (1) of rule 16 provides that if any trader fails to pay the amount of the tax the licensing authority shall cause a notice in

Form G to be served on the licensee requiring him to pay the amount of the tax within fifteen days of the date of service of the notice. Sub-rule (3) provides that if the tax is not paid within the time stated in the notice, the licensing authority may proceed to recover from him the sum leviable under the provisions of sub-section (3) of section 3. In view of these provisions the District Government Pleader, Panch Mahals, considers that it would not be feasible to resort to sub-section (3) of section 3 of the Act in the present case. The District Government Pleader's view appears to be correct. What the said sub-section (3) provides is that if the tax payable is not paid within the prescribed time, the Collector can in lieu thereof recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover. The words "prescribed time" in this sub-section would, when read with sub-rules (1) and (3) of rule 16, mean the period of 15 days referred to in the notice under that rule. As no such notice was issued in the cases under consideration, action under sub-section (3) of section 3 would not appear to be feasible.

3. The next question is whether it would be feasible to take action under section 18 of the Act. Sub-section (1) of that section empowers the Collector to accept from any person who has committed an offence punishable under the Act or the Rules, by way of composition of such offence, a sum of money not exceeding five hundred rupees or a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person whichever is greater. In order to enable action being taken under this section what is required is that the licensees must have committed an offence either under the Act or the Rules. In this connection attention is invited to

sections 10 and 11 of the Act. The former requires the trader (licensee) to keep and maintain accounts in the prescribed form of the value of meter spirit sold or purchased by him and to submit to the authorised officer statements in the prescribed form at the prescribed time. Section 11 prescribed the penalty on conviction for breach of the above requirements. Rule 15 requires the retail licencees to submit such monthly statements of daily accounts to the licensing authority by the first week of the following month. Similarly rule 14 requires submission of returns of spirit sold or consumed within 30 days of the close of each calendar month. Since, as stated by the District Magistrate, the licencees failed to submit such returns in time they have prima facie committed an effence punishable under section 11. It is therefore possible to prosecute them for the effence under section 10, and if the defaulting licensees offer by way of composition of the effence such amount as is referred to in section 18(1) it would be open to the Collector to compound the effence and on such composition the defaulting licensees shall be entitled to be discharged by the Court (see sub-section (2) of section 18). There would also be no objection before considering prosecution to inform the defaulting licensees that it is intended to prosecute them, unless they pay up by way of composition such amount as the Collector may deem fit to demand under section 18(1) and if they do not so pay up to launch a prosecution against them.

Id/-J.R.D. 13/7
Remembrancer of Legal Affairs.

U.R. to F.D.No. 688-Confl., dated the 16th July 1951.

BKS. 26/6/ 4c.

Office of the R.L.A.

Section 18, sub-section (1) of the Bombay Sales of Meter Spirit Taxation Act, 1946, provides that the Collector may accept from any person who has committed an offence punishable under this Act or the Rules thereunder by way of composition of such offence a sum of money not exceeding Rs.500/- or a sum or money double the amount of the tax payable under section 3 in respect of sales conducted by such person whichever is greater. It is clear from this provision that the Collector can compound an offence under this Act on payment by the offender of a sum of money not exceeding Rs.500/- or double the amount of the tax payable under section 3 in respect of any sales conducted by him whichever is greater. The Collector's offer to compound the offence on the latter agreeing to pay a sum of money equal to 1/4th of the amount of tax remaining in arrears would not be in conformity with section 18, sub-section (1) nor would the suggestion of the Finance Department to recover an amount equal to 1/2 the amount of the arrears of the tax be in conformity with section 18, sub-section (1). If the offence is to be compounded the offender must pay a sum of money not exceeding Rs.500/- or a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, whichever is greater. Collector's attention may be invited to section 18, sub-section (1) and he may be asked to make a fresh offer to the offenders strictly in conformity with the provision of section 18, sub-section (1) and if the offenders refuse to pay double the amount of the tax as stated therein, the only alternative for the Collector would be to prosecute them.

Id/-H J.R.D. 4/9
Remembrancer of Legal Affairs.

U.R. to F.D. No. 14195 e Confl., dated the 6th September 1951.

BKS. 26/6/ 4c.